

REMARKS

Claims 1, 3 to 5, 7, 9 to 11 and 13 to 18 are now pending.

In view of the following response, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

With respect to page two (2) of the Final Office Action, claims 13 and 18 were rejected under 35 U.S.C. § 112, first paragraph, as to the written description requirement. Specifically, the Final Office Action asserts that the feature of “for a detection of cornering, no energy recuperation is performed,” as provided for in the context of claims 13 and 18, “is narrower than the original disclosure”.

Claims 13 and 18 as presented provide the feature of “for a detection of cornering, the breaking torques applied to wheels on the rear axle are reduced to a state at which no energy recuperation is performed,” *and not the asserted* “for a detection of cornering, no energy recuperation is performed.” Support for the feature as provided for in the context of claims 13 and 18 may be found in Fig. 5 and the Specification at page 23, lines 5 to 19, page 8, lines 2 to 5, and page 17, lines 11 to 14. Therefore, withdrawal of the rejections is respectfully requested.

With respect to page three (3) of the Final Office Action, claims 1, 3 to 5, 7, 9 to 11, 13, 17, and 18 were rejected under 35 U.S.C. § 103(a) as unpatentable over JP 10-329681 (JP ‘681) in view of JP 11-205905 (JP ‘905), and in further view of U.S. Pat. No. 5,378,053 to Patient et al. (“Patient”).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness

cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Still further, M.P.E.P. 2143.03 requires the Office to consider all claim limitations “in judging patentability of that claim against the prior art” (*In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA, 1970)).

The independent claims 1 and 7, as presented, provide the feature in which “for a detection of cornering, breaking torques applied to wheels on the rear axle are reduced according to a ramp with starting point at an upper torque curve, the upper torque curve being determined by the torque limit.” The Office did not consider (or failed to indicate a consideration of) the feature in the Final Office Action. Thus, the Office has not presented a *prima facie* case of obviousness. Withdrawal of the rejections is respectfully requested.

Furthermore, the combination of JP ‘681, JP ‘905 and Patient does not disclose (or suggest) the feature in which “for a detection of cornering, breaking torques applied to wheels on the rear axle are reduced according to a ramp with starting point at an upper torque curve, the upper torque curve being determined by the torque limit” as provided for in the context of claims 1 and 7.

Therefore, claims 1 and 7, and their respective dependent claims 3 to 5, 9 to 11, and 13 to 18 are allowable.

With respect to page four (4) of the Final Office Action, claims 14 to 16 were rejected under 35 U.S.C. §103(a) as unpatentable over JP ‘681 in view of JP ‘905, in further view of Patient, and in still further view of U.S. Pat. No. 6,460,941 to Zenzen et al. (“Zenzen”).

Claims 14 to 16 depend from claim 1 and are therefore allowable for at least the same reasons as claim 1 since the secondary Zenzen reference does not cure (and is not asserted to cure) the critical deficiencies of the combination of JP ‘681, JP ‘905 and Patent.

Accordingly, it is respectfully submitted that claims 1, 3 to 5, 7, 9 to 11 and 13 to 18 are allowable.

Conclusion

It is therefore respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

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Respectfully submitted,

By: 

Gerard A. Messina
Reg. No. 35,952

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646

Ugnc.
33,865
Aaron C.
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